

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-200939.2 et al.

DATE: June 15, 1982

MATTER OF: American Farm Lines

DIGEST:

1. Lift trucks designed for intraplant industrial use, tractor excavating equipment and bitumen paving machines used for construction work and tow tractors used to tow aircraft within an airfield are not tractors or trucks within the meaning of those terms as they appear in the released value provisions of item 30, section (B), of the carrier's Tender 345, because by adopting commodities identified to the operating authority of carriers of motor vehicles, section (B) contemplates limited application to vehicles designed for over-the-highway use.
2. Lift trucks, tractor excavating equipment, bitumen paving machines and tow tractors, although commodities outside the scope of section (B) of item 30, are covered by section (A), which applies to commodities not listed in sections (B) or (C).
3. Despite the absence of a declaration on the Government bills of lading (GBL) indicating the value of the lift trucks et al., the lower released value rates published in Tender 345 are applicable where section (A), item 30, applies because by reference to condition 5 of the GBL (now 41 C.F.R. § 101-41.302-3(e)), section (A) relieves the Government from the requirement of making a declaration.
4. Streetsweeping machine, which contains equipment for road maintenance, is not a covered commodity under 30(B)(2). Item 30(B)(2) requires that the vehicle be a truck or trailer with equipment mounted thereon. A streetsweeping machine

cannot be considered a truck under item 30(B) since, without the streetsweeping equipment mounted on the vehicle, the vehicle is a truck chassis, not a truck. In addition, a street-sweeping machine is not used for over-the-highway transportation of persons and property.

5. Tactical air cargo transporter and loader described as an over-the-highway vehicle used to transport and load cargo is a truck covered under 30(B)(1).
6. Tactical air cargo transporter/loader is covered by item 30(B). Since Government failed to annotate GBL with declaration of released valuation, as required by Tender 345, Tender 345 was applicable to these shipments.

American Farm Lines (AFL) requests review of settlement actions taken by the General Services Administration (GSA). This decision covers AFL claims filed under B-200939.2, B-203644, B-204773, B-206184 and B-206185. These shipments of lift trucks, tractor excavating equipment, bitumen paving machines, tow tractors, streetsweeping machines, aircraft maintenance equipment, cargo transporter, and trailers moved on Government bills of lading (GBL) between various points covered by AFL Tender 345, and GSA paid AFL on the basis of released valuation rates published in AFL's Tender 345. AFL contends that the rates in Tender 345 are not applicable on the commodities transported in the absence of any notation on the GBL's as to their released value as required under item 30(B).

We sustain GSA's settlement action in part and reverse its settlement action in part.

There is apparent agreement between GSA and AFL that the commodities discussed herein are among the commodities contained in Tender 345's extensive commodity lists, and that the rates therein are applicable, provided the shipper complied with the released value provisions of item 30.

In American Farm Lines, B-200939, May 29, 1981, we characterized Tender 345 to be in the nature of a released valuation quotation because item 30 provides that applicability of the various rates and valuation charges therein depend upon the declared or agreed value of the commodity shipped. We noted that item 30 was subdivided into three

sections--(A), (B), and (C)--with section (B) applying to passenger vehicles, trucks, etc., and section (C) to such articles as rockets, missiles and sonar equipment, while section (A) applied to commodities not specified in sections (B) and (C). The significance of the subdivisions relates to requirements for a valuation notation on the GBL.

We held in B-200939, supra, that if a commodity is included among the lists in section (B) or (C), Tender 345 rates are not applicable where the shipper fails to annotate the GBL to show released valuation; whereas, if the commodity is not included in sections (B) and (C), it is covered by section (A), which provides that condition 5 of the GBL (41 C.F.R. § 101-41.302-3(e)) relieves the Government of the requirement of declaring the value on the GBL.

Item 30(B) states that:

"Commodity rates published in this tender, to the extent that they apply for the transportation of:

"(1) Passenger automobiles, ambulances, hearses, taxis, buses, bus chassis, freight automobiles, trucks, truck chassis, truck trailers, trailers, trucks and trailers combines, tractors, tractors and trailers combines; and

"(2) Trucks and/or trailers containing or having mounted thereon radar or other electronic equipment, gun control apparatus, cranes and wrecking equipment, firefighting apparatus, hospital, medical and/or rescue equipment, chemical processing and analyzing equipment, maintenance or repair equipment."

We held in American Farm Lines, Inc., B-203639, December 30, 1981, affirmed, April 22, 1982, that since the carrier stated that the list of commodities contained in section (B) of item 30 was adopted from Interstate Commerce Commission Released Rates Order No. MC-369, December 7, 1954, the commodities therein were limited in scope to motor vehicles designed for over-the-highway use; therefore, road graders designed for construction work were not tractors within section (B)(1). The list in the ICC's order consisted of commodities transported

by specialized carriers of motor vehicles and the carriers are classified as ones engaged in the transportation of automobiles, trucks, trailers, etc., either by the truck-away or drive-away method. Classification of Motor Carriers of Property, 2 MCC 703, 711 (1937). Further, the trucks and other vehicles authorized for transportation by these carriers are designed for over-the-highway transportation of personnel and property. See Arco Auto Carriers, Inc., Extension-Escanaba, Michigan (Arco), 86 MCC 555, 559 (1961).

The issue presented by AFL under each of its claims is whether or not the article transported by AFL is covered under item 30(B) of Tender 345. In our decision in B-203639, supra, under 30(B)(1), AFL must show that the automobiles, trucks or trailers, etc., are designed for over-the-highway transportation of personnel and property. Under 30(B)(2), AFL first must show the article is a truck or trailer designed for over-the-highway transportation of personnel and property. Then, it must show that the truck or trailer has a specified type of equipment mounted or contained thereon. For example, a truck chassis with equipment mounted on it does not satisfy this criteria. See Kenosha Auto transport Corp. Ext.-Union City, Ind. (Kenosha), 54 MCC 689 (1952); on the other hand, trailers used to transport property over the highway which contain telephone repair equipment are covered under 30(B)(2). If the articles are not covered by item 30(B), item 30(A) controls, and Tender 345 rates apply without the need for released valuation annotation.

AFL requests our review of shipments described as tractor excavating equipment, contending these are tractors under 30(B)(1). With respect to this commodity, in our view, our decision in B-203639, which held that a road grader is not a motor vehicle designed for over-the-highway transportation of personnel or property, is dispositive concerning this article. The tractor excavating equipment is for construction, off-highway use, and is not an over-the-highway vehicle used for transportation of persons or property. See B-203639, supra; Arco; Curtis Keal Transportation Co., Inc., Ext.-Calif., (Curtis) 78 MCC 139 (1958).

AFL also has appealed lift trucks, contending these are covered by item 30(B)(1). The record indicates that these articles are industrial trucks designed for lifting as well as carrying material within a plant or warehouse. Despite the capacity to transport property, a lift truck clearly is not designed for over-the-highway use. As a

result, they are not within the scope of the term "trucks" as contemplated by section (B)(1). See B-203639, supra; L. C. Jones Trucking Co., Inc., Ext.-Calif., 78 MCC 139 (1958).

Similarly, the record indicates the tow tractor shipped, which AFL argues is a item 30(B) article, is the type used to tow aircraft within the confines of an airfield and, therefore, AFL has not shown it is an over-the-highway tractor contemplated under 30(B)(1).

AFL has also filed two claims concerning a shipment consisting of a "Bitumen Paving Machine, self-propelled, crawler mounted" and another shipment of a "Bituminous distributor, wheeled and self-propelled." The record indicates these machines are primarily road-paving equipment used for construction and repair of roads. Thus, they cannot be considered vehicles used for the transportation of persons or property. Therefore, we conclude these machines are not covered by item 30(B)(1) or (2). See B-203639, supra; Curtis, supra. We also agree with GSA that AFL has not shown that the above-described equipment is the same or similar to the "bins" and "conveyors" considered trailers under Morgan Drive-Away, Inc., Ext.--Glasgow, Mo., 117 MCC 779 (1973). See 37 Comp. Gen. 535 (1958).

AFL also contends that shipments of portable platforms for aircraft or shiploading, unloading or service, shipments of aircraft stands for unloading or service, shipments of aircraft loading or servicing elevators, and shipments of "conveyors or elevators for aircraft loading (tactical cargo loaders)" are listed under 30(B)(2) as trucks or trailers with maintenance equipment mounted thereon.

The aircraft platforms and stands are primarily used for aircraft maintenance and the lifting and movement of maintenance crews, but within the confines of an airfield. These articles cannot be considered over-the-highway vehicles used for the transportation of persons or property and, therefore, are not trucks or trailers covered under 30(B)(2). Thus, in our view, these articles are not covered by 30(B)(2).

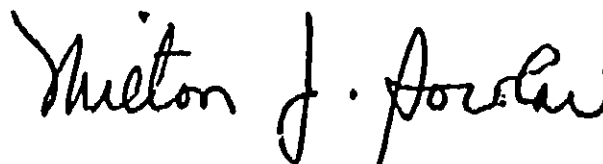
The tactical air cargo loader descriptive literature submitted by GSA states that the tactical air cargo loader is a transporter and loader and is a vehicle with a cab, "designed to traverse rough terrain with a 25,000 pound

load, and will carry a 36,000 pound load on paved services." In our view, this article is covered under 30(B)(1) because it is an over-the-highway truck used for transportation of property.

AFL also contends that two shipments of street-sweeping machines, self-propelled and wheeled are covered under 30(B). Specifically, AFL argues these machines are included under item 30(B)(2) as "Trucks * * * containing or having mounted thereon * * * maintenance * * * equipment." In our view, the streetsweeping machine is a motor vehicle containing equipment for the maintaining of roads. However, the vehicle cannot be considered a truck under 30(B) for two reasons. First, item 30(B) covers trucks with equipment mounted thereon. Without the streetsweeping equipment mounted on the vehicle, what remains is a truck chassis, not a truck. Kenosha, supra. This does not satisfy the requirement for a truck under 30(B). Second, as GSA correctly points out, the vehicle is not used primarily for transportation of persons or property. See B-203639, supra.

GSA has advised us that it has reconsidered its previous audit position and now believes that articles shipped consisting of various types of outfits such as steam laundry or telephone repair outfits mounted on trailer vehicles are covered by 30(B)(2) and the cargo and water tank trailers are also covered under 30(B). We agree with GSA and request that all claims involving these articles be paid.

We sustain GSA's audit action in part and reverse GSA's audit action in part. GSA should settle all the AFL claims concerning these articles in accordance with this decision.



Acting Comptroller General
of the United States